



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,515	01/07/2005	Jan Henning Simonsen	Patradc	5955
7590 James C Wray Suite 300 1493 Chain Bridge Road McLean, VA 22101			EXAMINER PAPAPIETRO, JACQUELINE M	
			ART UNIT 3739	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			12/29/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/520,515

Applicant(s)

SIMONSEN, JAN HENNING

Examiner

Jacqueline Papapietro

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on (not filed) is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04/11/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Denmark on 07/08/2002. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

Drawings

The drawings are objected to under 37 CFR 1.83(b) because they are incomplete. 37 CFR 1.83(b) reads as follows:

When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date

Art Unit: 3739

of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: There are typographical errors in the specification, such as "scares" in line 14 of page 4, "arrange" in line 7 of page 5, "devices" in line 25 of page 7, and "created" in line 32 of page 10. There are errors in the specification such as the addition of word "between" in line 4 of page 7 and the word "our" in line 22 of page 7.

Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.

Art Unit: 3739

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(g) BRIEF SUMMARY OF THE INVENTION.

(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(i) DETAILED DESCRIPTION OF THE INVENTION.

(j) CLAIM OR CLAIMS (commencing on a separate sheet).

(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

Art Unit: 3739

- (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
- (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR

Art Unit: 3739

1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

Claim Objections

Claim 1 is objected to because of the following informalities: The recitation “wherein between two or more light sources are arranged in a reflector and that lens means are arranged in front of the reflector and further that the reflector can be arranged in the device” in lines 4-7 does not make sense. The recitation “the energy source” in line 9 lacks proper antecedent basis.

Claim 10 is objected to because “light emitting device” lacks an article.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Drawings of the claimed invention are necessary.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the light sources" in line 9. Claim 2 recites "each light source" in line 3 and "the other light sources" in line 4. Claim 3 recites "at least one light source" in lines 2-3. Claim 6 recites "each light source" in line 3. Claims 7-10 recite "the light sources" in lines 3, 3, 4, and 4, respectively. Claim 11 recites "the constellation of different light sources" in lines 2-3. Claim 12 recites "each light emitting source" in lines 4-5. There is insufficient antecedent basis for these limitations in the claims. It is unclear to which light sources the applicant is referring in each recitation regarding any form of "the light sources." Applicant should be consistent in terminology regarding each component of the invention. The inconsistent language and lack of antecedent bases render the claims indefinite.

Claim 6 recites the limitation "electric circuitry" in line 2. It is unclear whether this refers to the same electrical circuitry in claims 2, or different electrical circuitry. The lack of antecedent basis renders the claim indefinite.

Claim 12 recites the limitation "the replaceable/disposable unit" in line 3. This limitation lacks proper antecedent basis. It is unclear to what "the replaceable/disposable unit" refers.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Azar (US 6214034 B1), as best understood by the examiner in light of the application.

Regarding claim 1, Azar discloses a therapeutic treatment device comprising a trigger mechanism (column 12 lines 2-5) and means for providing energy to a light source (70 and 55) wherein the device comprises at least one incoherent light source (column 8 line 31) wherein two or more light sources (62 and 64) are arranged in a reflector (52, 52A) and lens means (16) are arranged in front of the reflector and wherein the reflector can be arranged in the device, which also comprises trigger means

in the shape of a trigger mechanism for connecting the light sources to the energy source (column 12 lines 2-5).

Regarding claim 2, Azar discloses the therapeutic treatment device according to claim 1 wherein electric circuitry is provided (column 16 lines 28-31) such that each light source can be controlled independently of the other light sources in the device (Fig 8 and Fig 15).

Regarding claim 3, Azar discloses the therapeutic treatment device of claim 1 wherein at least one light source can emit a series of light pulses (column 10 lines 32-33).

Regarding claim 4, Azar discloses the therapeutic treatment device according to claim 1 wherein a filter (58) can be arranged in the device such that the emitted light will travel through the filter (Fig 7).

Regarding claim 5, Azar discloses the therapeutic treatment device according to claim 4 wherein different filters (56 and 58, Fig 7) or no filter (Fig 9) can be arranged in the device with respect to every distinct light source.

Regarding claim 6, Azar discloses the therapeutic treatment device according to claim 2 wherein electric circuitry is provided such that each light source can be controlled independently with respect to intensity, wave band, pulse length, and sequence (column 13 lines 5-9).

Regarding claim 7, Azar discloses the therapeutic treatment device according to claim 1 wherein one or more of the light sources may be coated with a dye (20, column 8 lines 42-43).

Regarding claim 8, Azar discloses the therapeutic treatment device according to claim 1 wherein the light sources are selected among flash bulbs, electronic flash tubes, or laser diodes (column 10 lines 26-28 and lines 40-42).

Regarding claim 10, Azar discloses a light emitting device comprising at least one incoherent light source (column 8 line 31) for use in the therapeutic treatment device according to claim 1 wherein the light sources (62 and 64) and the reflector (52) are arranged in one replaceable/disposable light emitting device (Fig 7, column 15 lines 61-64). Furthermore, the therapeutic treatment device and the light emitting device are both inherently disposable and replaceable.

Regarding claim 11, Azar discloses the light emitting device according to claim 10 wherein the constellation of different light sources in the device constitute a complete specific therapeutic treatment (column 8 lines 17-23).

Regarding claim 12, Azar discloses the light emitting device according to claim 10 wherein the replaceable/disposable unit comprises means for controlling the sequence and/or the pulse length and/or intensity (column 6 lines 7-11 and column 13 lines 5-9) of each light emitting source (Fig 8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Azar, as applied to claim 1, in view of Koop et al (US 6413253 B1).

Azar discloses the therapeutic treatment device according to claim 1, but does not disclose the device wherein a source of microwave or high frequency radio wave energy is provided in addition to the light sources.

Koop teaches a therapeutic treatment device comprising a trigger mechanism (column 4 lines 37-38) and means for providing energy to a light source (Fig 1) wherein the device comprises at least one incoherent light source (column 7 lines 25-26) and a source of microwave or high frequency radio wave energy (column 6 lines 40-43) in addition to the light sources. The Koop invention delivers light therapy to a selected area of tissue in order to treat a given skin ailment, which is also the goal of the Azar invention and the instant invention. Koop teaches that microwave energy and radio frequency electrical energy can be used in the device instead of a diode laser or a flash lamp.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have added a microwave or radio frequency energy

Art Unit: 3739

source to the Azar device in view of Koop in order to provide a source for preheating the target tissue in order to reduce potential scarring of the surrounding tissue.

Conclusion

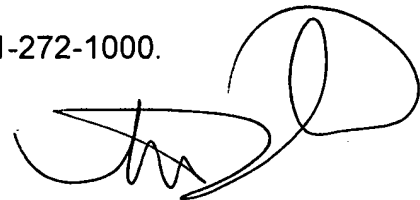
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline Papapietro whose telephone number is (571) 272-1546. The examiner can normally be reached on M-F 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMP

Jacqueline Papapietro
Art Unit 3739



LINDA G. DVORAK
SUPERVISOR EXAMINER